

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TIMOTHY WAYNE COLLINS,)
)
 Petitioner,)
)
 v.) C.A. No. N17X-10-015 JRJ
)
 STATE OF DELAWARE)
)
 Respondent.)
)

Date Submitted: February 5, 2020
Date Decided: April 13, 2020

ORDER

Upon consideration of the Petitioner’s “Motion for Reconsideration of Expungement Request” (“Motion for Reconsideration”), statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. In 1998, Collins pled guilty and was sentenced on two counts of Unlawful Sexual Intercourse Third Degree–Without Consent and one count of Offensive Touching.¹
2. On October 25, 2017, Collins filed a Petition for Expungement of his criminal record, which the State opposed. On December 4, 2017, Collins’s Petition

¹ Unlawful Sexual Intercourse Third Degree–Without Consent is a felony conviction pursuant to 11 *Del. C.* § 771. Offensive Touching is a misdemeanor conviction pursuant to 11 *Del. C.* § 601.

was denied in part and granted in part (“First Order”).² The petition for expungement was denied with respect to Collins’s January 26, 1998 convictions for two counts of Unlawful Sexual Intercourse Third Degree–Without Consent and one count of Offensive Touching.

3. Collins filed a Request for Reconsideration of the First Order. On February 5, 2019, the Commissioner denied Collins’s Request for Reconsideration, finding it was an improper collateral attack on the underlying convictions (“Second Order”).³

4. Collins appealed the Second Order. On March 27, 2019, the Court denied his appeal because under then-extant expungement statutes, felony convictions could not be expunged,⁴ and he did not meet his burden of proof for expungement of his misdemeanor conviction.⁵

² *Collins v. State*, C.A. No. N17X-10-015, Parker, Comm’r (Del. Super. Dec. 4, 2017) (ORDER). The Commissioner denied the petition as to all of Collins’s charges that were related to those arrests that were not “terminated in favor of the accused” pursuant to 11 *Del. C.* § 4372. The petition was granted in part as to the charges stemming from Collins’s arrests that were either dismissed or nolle prossed on the condition that Collins provide the Court with proof that his outstanding financial obligations were satisfied.

³ *Collins v. State*, C.A. No. N17X-10-015, Parker, Comm’r (Del. Super. Feb. 4, 2019) (ORDER).

⁴ *Collins v. State*, C.A. No. N17X-10-015, Jurden, P.J. (Del. Super. Apr. 15, 2019) (“The expungement statutes do not provide any basis for the expungement of this felony even though [Petitioner] was unconditionally pardoned by the Governor, and even if manifest injustice will result.”).

⁵ *Id.* at *3 (citing 11 *Del. C.* § 4375(a); *Webster v. State*, 2016 WL 5939166, at *1 (Del. Super. Sept. 2, 2016)). With respect to his misdemeanor conviction, Collins failed to allege specific facts that supported his manifest injustice allegation, and therefore, failed to prove manifest injustice by a preponderance of the evidence.

5. On February 5, 2020, Collins filed the instant Motion for Reconsideration—his second request for reconsideration, asking the Court, pursuant to 11 *Del. C.* § 4372(i), to expunge his criminal record and waive his outstanding financial obligations. In support of the Motion, Collins asserts that having a criminal record and being a registered sex offender constitute a “massive hardship” because he cannot find a job that pays “a fair living wage.”⁶

6. Pursuant to 11 *Del. C.* § 4374, a petitioner may file a petition for expungement in the Superior Court.⁷ Once a petition is filed, the State becomes the defendant to the proceedings and must be served with a copy of the petition.⁸ Petitions for expungement are civil actions and “[a]ny party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.”⁹

7. Pursuant to Superior Court Civil Rule 59(e), “[a] motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision. The motion shall briefly and distinctly state the grounds therefor.”¹⁰

8. Collins’s Motion for Reconsideration was filed 10 months after the Court denied his appeal, and it is, therefore, barred as untimely.

⁶ Collins’s Motion for Reconsideration of Expungement Request was docketed by the Prothonotary on February 5, 2020.

⁷ 11 *Del. C.* § 4374. Petitioner states that he served the Attorney General with a copy of the Motion for Reconsideration.

⁸ 11 *Del. C.* § 4374(e), (g). The Attorney General then has 120 days from the date of service to file any objection or answer to the petition.

⁹ 11 *Del. C.* § 4374(g).

¹⁰ Super. Ct. Civ. R. 59(e).

9. Assuming, *arguendo*, that the Motion for Reconsideration is timely, Collins's conviction of Unlawful Sexual Intercourse Third Degree is not eligible for expungement.¹¹ In addition, Collins fails to meet his burden of proof with respect to alleged manifest injustice resulting from his misdemeanor of offensive touching. Pursuant to 11 *Del. C.* § 4374(f), a petitioner must, "allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden is on the petitioner to prove such manifest injustice by a preponderance of the evidence."¹² Collins fails to allege specific facts and fails to establish manifest injustice.

NOW, THEREFORE, Collins's Motion for Reconsideration of Expungement Request is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden

Jan R. Jurden, President Judge

Original to Prothonotary

cc: Timothy Wayne Collins (SBI# 00288101)
Angelica Endres, DAG

¹¹ See 11 *Del. C.* § 4374(b)(1) (citing 11 *Del. C.* § 4201(c)).

¹² See 11 *Del. C.* § 4374(f).